

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

PETITION TO REVIVE

APPLICANT: Michael J. Allen et al. EXAMINER: Nathan Andrew Bowers  
SERIAL NO.: 10/690,809 GROUP ART UNIT: 1744  
FILING DATE: October 21, 2003 CONFIRMATION NO.: 9427  
INVENTION: NANOMOTION SENSING SYSTEM AND METHOD

Mail Stop Petition  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

SIR:

Applicants respectfully request withdrawal of the abandonment of the above-identified application in accordance with 37 CFR §1.137(b). Enclosed herewith is (1) the reply required for the outstanding office action, (2) a check in the amount of \$270 for the fee, (3) an updated power of attorney form, and (4) a statement as set forth below that the entire delay in filing which resulted in the abandonment was unavoidable.

In the alternative, if after consideration it is determined that the requirements for revival as an unavoidable abandonment have not been met, please consider this as a petition for revival due to unintentional delay.

**Statement under 37 CFR §1.137(b)(3)**

The present application was filed on October 21, 2003, by the law firm of Pillsbury Winthrop LLP, on behalf of the inventors Michael J. Allen and Lucien Ghislain. On April 5, 2004, an assignment of the inventors' interest in the patent application to Alegis Microsystems was recorded. A new power of attorney and revocation of prior powers signed by Michael J. Allen, an inventor and president of the assignee Alegis Microsystems was filed in September, 2005, giving power of attorney to James E. Eakin. This first revocation and power of attorney was accepted by the U.S. Patent and Trademark Office in October, 2005.

On August 22, 2007, a Request for Continued Examination and an Amendment were filed by Schiff Hardin LLP. A revocation and new power of attorney to Schiff Hardin LLP followed on November 9, 2007, signed by Mr. Allen, an inventor and the president of the assignee Alegis Microsystems.

The Examiner issued a response to the Request for Continued Examination and the Amendment that was sent only to James Eakin, as was the rejection of the revocation and new power of attorney to Schiff Hardin LLP . Neither the inventors, nor the firm filing the new power of attorney and the RCE were provided with these responses by Mr. Eakin. No communication from the USPTO was passed from the former attorney to the inventors or Schiff Hardin LLP until after the application had been abandoned.

The Examiner issued a non-final rejection on October 17, 2007 of the application, as amended by the amendment accompanying the RCE prepared by Applicants and Schiff Hardin LLP, indicating that the finality of the previous Office Action had been withdrawn and the applicants' submission had been considered, but that it did not place the application into condition for allowance. As noted, this rejection was sent only to Mr. Eakin and was never forwarded to the inventors nor to the firm filing the RCE and amendment to which the office action responded. The time for responding to the October 17, 2007 Office Action passed and Applicants were still unaware that the revocation of the former power of attorney had been rejected by the USPTO and that another Office Action had been issued. In the absence of a response to the October 17, 2007 Office Action, the Examiner issued a Notice of Abandonment dated July 7, 2008, indicating that the application has been abandoned. The Notice of Abandonment was sent only to Mr. Eakin.

The former attorney who had not forwarded either the rejection of the new power of attorney or the October 17, 2007 office action to Applicants did forward the notice of abandonment to Mr. Allen. Only after receipt of the notice of abandonment did the Applicants or the undersigned attorneys become aware of the rejection of the revocation and new power of attorney or the October 17, 2007 office action. The abandonment and the delay in filing the response were entirely unavoidable.

### **Conclusion**

Applicants respectfully petition for withdrawal of the unavoidable abandonment of the present application. In the alternative, applicants respectfully petition for withdrawal of the unintentional abandonment of the present application.

A response to the pending office action and an updated revocation and new power of attorney signed by Michael J. Allen as an officer of the assignee, are being filed herewith. As such, all conditions for granting of the present petition have been met.

Favorable consideration of the present petition is hereby requested.

**Deposit Account Information**

The Commissioner is hereby authorized to charge any additional fees which may be required or to credit any overpayment to account no. 501519.

Respectfully submitted,



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**CUSTOMER NO. 26574**

**ATTORNEY FOR APPLICANT**

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